

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Network Services Solutions, L.L.C.)	File No.
)	
Request for Waiver of Section 54.611)	
of the Commission's Rules)	

**PETITION FOR WAIVER
AND EMERGENCY REQUEST FOR EXPEDITED STAY AND/OR SPECIAL RELIEF

OF

NETWORK SERVICES SOLUTIONS, LLC**

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June 18, 2012

SUMMARY

Network Services Solutions, L.L.C. ("NSS") is a telecommunications carrier providing services to rural health care providers, which services qualify for support under the Rural Health Care Program of the Universal Service Fund ("USF") as administered by the Universal Service Administrative Company ("USAC"). Because NSS is not classified as a so-called *de minimis* status under the USF rules, NSS no longer is eligible for bi-monthly disbursements from USAC. Instead, pursuant to 47 C.F.R. § 54.611, NSS (and its rural health care provider customers) must wait for several months and sometimes more than a year to receive disbursements from USAC. NSS files this waiver request to return to the *status quo ante* for the purpose of USAC disbursements only. Absent such a waiver, NSS will soon go out of business, leaving more than 185 rural health care providers without essential telecommunications services.

NSS' request serves the public interest and simply returns the company to the disbursement schedule that it (and its rural health care provider customers) relied upon prior to June 30, 2009. A disbursement schedule of every other week (on average) is routinely within USAC's capacity and would not impair USAC or the USF in any way. In essence, NSS asks only for a change back to the status quo in the timing of disbursements it receives.

Because this request serves the public interest and has no adverse impact on any party, NSS also asks that the Commission immediately stay the enforcement of 47 C.F.R. § 54.611 with respect to USAC's disbursements to NSS. In addition, if a public comment period is deemed necessary for this petition, NSS asks that the Commission shorten any such comment period to fourteen (14) days.

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Network Services Solutions, L.L.C. ("NSS"), by its attorneys, and pursuant to Section 1.3 of the Commission's rules, hereby requests a waiver of Section 54.611 of the Commission's rules (47 C.F.R. § 54.611).¹ The grounds for this waiver request are set forth below. In addition, NSS urgently requests that the Commission immediately stay the enforcement of Section 54.611 by the Universal Service Administrative Company ("USAC") as it pertains to NSS' non-*de minimis* status because strict enforcement of this rule – from which the Commission has granted waivers to carriers in similar situations – gravely threatens the immediate viability of NSS and would imperil uninterrupted service to the rural health care providers ("HCPs") served by NSS, as well as the operations and the patients of those rural HCPs.

NSS also respectfully requests that the Commission waive any public comment period that otherwise might be associated with its petition or, in the alternative, shorten such public comment period to fourteen (14) days.

¹ Although NSS does not believe it necessary, to the extent the Commission believes that the grants of relief sought herein imply waiver of 47 C.F.R. § 54.708, NSS respectfully includes this section in its requests for relief for the reasons enumerated herein.

FACTUAL BACKGROUND

NSS is a telecommunications carrier that was founded in April, 2005 to provide telecommunications services to rural HCPs. Currently NSS serves more than 500 rural customers (including more than 185 HCPs) in 24 states. Often, the telecommunications services needed by HCPs are prohibitively expensive absent the funding provided by the Rural Health Care Division ("RHCD") of USAC. In addition, given the relatively large amounts of money involved, delays in funding for already installed services can be financially devastating to an HCP.

Prior to June 30, 2009, NSS was considered a *de minimis* carrier under 47 C.F.R. §54.708. Consequently, NSS was not subject to the "netting" procedure described in Section 54.611(d), nor was NSS subject to extensive delay in reimbursement from USAC, which delay can amount to more than one (1) year from the time that support is approved by USAC. USAC has separate procedures for reimbursement to qualified *de minimis* carriers. These procedures afforded NSS the opportunity to receive disbursements from USAC approximately bi-weekly.

NSS has now grown to the point where it is no longer a *de minimis* carrier. NSS' 2008 total revenues billed for telecom services (comprised predominantly of intrastate services) were \$450,000.00 per year, and after becoming non-*de minimis* in the 3rd quarter of 2009 NSS' total federal Universal Service Fund ("USF") direct contributions (assessed against qualifying interstate telecommunications services) were \$35,000.00. NSS received \$350,000.00 in Rural Health Care Program ("RHCP") disbursements from USAC in 2008, the payments for which were issued bi-weekly, on average. The scope of NSS' services to the rural health care market has grown so substantially that thus far in 2012, NSS has contributed approximately \$18,000.00 per month to the federal USF and, coincident with its growth in USF contributions, NSS will

invoice USAC approximately \$1,800,000.00 in the next few months as the USAC processes approvals of the eligibility for funding by HCPs for the 2011 funding year. NSS fully expects that USAC will approve all its 2011 invoices (for the 2011 funding year), but NSS cannot continue operations if it must wait several months, or even one (1) year or more, for USAC disbursements. Indeed, in the real world no small business can wait over a year for such disbursements. NSS is a reseller of intrastate data lines, interstate data lines, MPLS wide area network connections and internet connectivity, and NSS' underlying carriers expect and demand timely payment for the services they provide to NSS on a wholesale basis. NSS simply cannot subsidize USAC by paying its own underlying carriers monthly, while only receiving USAC disbursements annually (or longer).

Just as important is the adverse effect on NSS' HCP customers. The application of the current funding process already places significant financial hardship on HCPs due to the extensive time between filing of funding request documents (collectively referred to by USAC as a "packet") and approval of them. The HCPs are (with few exceptions) paying the full price for the very circuits they can ill afford while waiting for as long as 7 to 9 months while USAC works through its annual approval process. (After all, the very reason these public and/or nonprofit HCPs seek federal support is to receive discounts from relatively higher non-urban rates.) Adding up to a year or more to this initial process for the "netting" of NSS' USF contributions and reimbursements exacerbates the HCPs' already difficult position. Most HCPs expect an immediate cash reimbursement upon approval of services. Without the *de minimis* carrier reimbursement procedure, NSS cannot provide the HCPs immediate payments. Instead the HCP must settle for a credit to its account. The original delay described above in and of itself creates a significant hardship to rural HCP participants. Add to this the additional delay in reimbursement created by NSS' non *de minimis* status and the

effects on HCPs can only get worse.

NSS wishes to clarify for the Commission a point of potential confusion. NSS did not immediately file for the waiver when recognized as non-*de minimus*. The current hold on USAC reimbursements to NSS can instead be attributed, at least in part, to the inadvertent filing of an incorrect 2011 Form 499A in which zero revenues were reported for the year 2010, thereby inadvertently reverting NSS to *de minimus* status and temporarily insulating NSS from the severe cash flow difficulties associated with non-*de minimus* status.² This incorrect filing was due to an error caused by the party handling NSS' billing functions, but NSS has since terminated that party's services and enacted measures to permanently correct the issue, thereby preventing this from ever occurring again in the future. Once NSS filed its 2012 Form 499A (which correctly reported its actual 2011 revenues), NSS was once again deemed to be non-*de minimus* and USAC began netting NSS' contributions against NSS' contributor account, thereby causing the instant financial hardship.

Once NSS understood the implications of its renewed non-*de minimis* status, the company tried to carry the delays in reimbursement through utilizing its own cash flow and setting up lines up credit facilities with banking resources. In addition, the owner of NSS (Scott Madison) has personally paid current liabilities of the company out of his own pocket and using his own personal credit cards. As NSS has grown and is providing a significant number of services for a growing number of rural HCPs, the financial burden of subsidizing USAC support on behalf of the rural HCPs that NSS serves has become impossible to sustain. The continued delays in receiving support from USAC has led to NSS not being able to meet its obligations with its underlying wholesale providers. A catastrophic impact to

² NSS has since filed a revised 2011 FCC 499A (correctly reporting 2010 actual revenues).

the rural HCPs that NSS is providing services to is imminent because NSS' wholesale providers will interrupt services due to non-payment. In light of the urgency of this matter, NSS files the instant emergency request for expedited relief.

STANDARDS OF LAW

The Commission may waive any provision of its rules on its own motion and for good cause shown.³ A rule may be waived where the particular facts make rigid compliance inconsistent with the public interest.⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ In sum, waiver is appropriate if special circumstances warrant deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁶

The Commission, employing a traditional four-part test, will issue a stay if the petitioner demonstrates (1) it is likely to prevail on the merits in subsequent proceedings; (2) it will suffer irreparable injury absent a stay; (3) the stay would not harm other interested parties; and (4) the stay would serve the public interest.⁷ No single factor is dispositive, and each case requires its own balancing of the factors in the test, which apply somewhat flexibly. For example, in cases where the second, third, and fourth factors strongly favor a stay, a grant is appropriate even if there is less likelihood of success on the merits, if a substantial case on the merits is presented.⁸ Similarly, a compelling case showing that the public interest will be harmed lessens

³ 47 C.F.R. § 1.3.

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972).

⁶ *Northeast Cellular*, 897 F.2d at 1166.

⁷ See, e.g., *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, 15 FCC Rcd. 7051, 7054 (1999) (citing *Biennial Regulatory Review*, 14 FCC Rcd. 9305, 9307 (1999) (citing *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)). See also *Washington Metro. Area Transit Comm 'n v. Holiday Tours*, 559 F.2d 841, 842-43 (D.C. Cir. 1977) (*Holiday Tours*); *Prometheus Radio Project v. FCC*, 2003 WL 22052896 (3d Cir. Sept. 3, 2003) (*per curiam*).

⁸ *Holiday Tours*, 559 F.2d at 843.

the degree of certainty with which a stay movant must show it will prevail on the merits.⁹ But in any event, recent Commission waivers in nearly identical circumstances show that NSS will prevail on the merits.

DISCUSSION

A. NSS Merits Waiver of Sections 54.611

1. The Commission Has Waived Section 54.611 in Similar Circumstances

The Commission has in the past recognized the inherent inequities in 47 C.F.R. § 54.611 for service providers like NSS. For instance, in 2007, when it selected participants for the universal service Rural Health Care Pilot Program ("RFICPP"), the Commission waived Section 54.611 for all carriers that qualified to participate in the program. The Commission's analysis then remains just as true and powerful now:

Because section 54.611 requires USAC to reimburse carriers the first quarter of the calendar year following the year in which costs were incurred, providers receiving support under the Pilot Program could be owed millions of dollars by the time they are reimbursed in full. Such a delay in reimbursement could jeopardize the timely deployment of selected participants' broadband networks, which would be contrary to the goals of the Pilot Program to stimulate deployment of broadband infrastructure necessary to support telemedicine services to those areas of the country where the needs for those benefits is most acute. Additionally, section 54.611 could produce an inequitable result by depriving providers of the funding flow needed to continue to perform their service contracts with selected participants because, among other things, service providers may potentially be unable to meet their payment obligations to vendors without finding other means of financial support. Waiving section 54.611 also serves the public interest because it promotes the goals of section 254 of the 1996 Act to enhance access to advanced telecommunications and information services for health care providers.¹⁰

This is precisely the situation NSS faces. Absent timely reimbursement –

⁹ See *AT&T Corp.*, 13 FCC Rcd 14508 (1998).

¹⁰ *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20419 (2007) (*2007 RHC Pilot Program Selection Order*).

specifically, every other week (on average) – from USAC, NSS will have to advance in excess of \$2,000,000.00 (and perhaps more) out of its own funds (which simply do not exist) for a year or more before the company receives its disbursements. This is a manifestly untenable situation for any provider, save perhaps a huge monopoly incumbent with limitless cash and an absence of cash flow constraints. Further, a delay in reimbursement will jeopardize continued service to NSS’ HCP customers, which would be utterly inimical to the goals of the Commission's RHC Program.¹¹ Continued strict enforcement of Section 54.611 in this circumstance will produce an inequitable result and indeed a crushing blow by depriving NSS of the funding flow needed to perform its service contracts with HCPs because, among other things, NSS will be unable to meet its payment obligations to its underlying carriers without finding other means of financial support (which other means simply do not exist). Waiving Section 54.611 for NSS also serves the public interest because it promotes the goals of Section 254 of the 1996 Act to enhance access to advanced telecommunications and information services for health care providers.¹²

The Commission has also waived the rule for a specific carrier whose circumstances are very similar to NSS. In 2006 the Commission waived Section 54.611 for Unicom, Inc. ("Unicom"), a carrier that serves rural Alaska.¹³ Like NSS, Unicom performs contracts for broadband telecommunications services supporting dozens of rural clinics.¹⁴ Like NSS, Unicom received notice from USAC that it would not immediately issue disbursements to Unicom “because it is USAC's practice, pursuant to section 54.611 of [the Commission's] rules, to refund any credit balances due a service provider after calculating their universal service

¹¹ In the Matter of Rural Health Care Support Mechanism, WC Docket No. 02-60, Order, 21 FCC Rcd 11111 (2006).

¹² 47 U.S.C. § 254(h)(2)(A).

¹³ Unicom Inc. Request for Waiver of Section 54.611 of the Commission’s Rules, CC Docket No. 02-60, Order, 21 FCC Rcd 11241, 11244, para. 10 (Wireline Comp. Bur. 2006) (Unicom).

¹⁴ *Id.* at ¶ 4.

obligation ‘on an annual basis.’”¹⁵ According to USAC, that calculation could not be completed until mid-September of each year, and USAC issues refunds no earlier than November of each year.¹⁶ Unicom sought a waiver of Section 54.611 “to allow USAC to begin making reimbursement payments immediately to Unicom on a monthly basis for the net payments to which it is entitled under the rural health universal support mechanism.”¹⁷ Just as with Unicom, USAC’s implementation of Section 54.611 as applied to NSS is “unnecessarily rigid and harmful and creates a financial burden,”¹⁸ particularly, in this instance, where there is great disparity between NSS’ contribution obligations to USF and the reimbursement amounts owed to NSS.

Next, it bears reminding that the relief NSS seeks is merely a return to the disbursement schedule *status quo* before the company was deemed a non-*de minimis* USF contributor. Prior to June 30, 2009, NSS received USAC disbursements, on a bi-monthly basis (on average). Those regular payments allowed NSS to keep current with its underlying carrier vendors, bearing in mind that NSS has to credit the HCPs’ accounts prior to requesting support payments from USAC. Clearly, too, USAC was fully able to issue the disbursements in such a fashion and without hesitation (just as USAC continues to do for *de minimis* carriers pursuant to its current policy). Thus, a waiver of Section 54.611 will not burden USAC, and will instead allow a resumption of the regular, more logical reimbursement scheme that NSS experienced until June 30, 2009.

Finally, NSS has exhausted all available remedies before USAC. Specifically, NSS has brought this situation to USAC’s attention and was advised that its best option for a disbursement

¹⁵ *Id.* at ¶ 5.

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 6.

¹⁸ *Id.*

process exception would be to file the instant emergency request for expedited relief because such relief had been granted in several similar situations. For all these reasons, the Commission must waive Section 54.611 for NSS.

Under USAC's procedures pursuant to Section 54.611, NSS must wait until at least the annual true-up in November, 2012 for net payments to which NSS is entitled. Quite simply, NSS cannot survive as a carrier in such an onerous and illogical environment. No company can be expected to wait in excess of eight (8) months or more for net rural health care disbursements from USAC simply because it is not a *de minimis* USF contributor. NSS will pay approximately \$250,000.00 into the USF in 2012 (based on a projection of the qualifying interstate telecommunications services NSS provides). NSS will bill rural HCPs in excess of \$3,000,000.00 in fund year 2012. USAC's accounting practice as applied to NSS gravely threatens NSS' very existence, and is detrimental to the very public interest – expanded health care in rural communities – that the RHCP is designed to meet. Indeed, failure to grant a waiver in such a circumstance would be tantamount to ceding participation in the RHC program to a handful of incumbents, for only they will have the resources to absorb the massive debits that will be incurred until USAC gets around to issuing reimbursements.

NSS must be very clear regarding the relief it seeks here: NSS cannot survive under a calendar quarter payment regime. NSS' financial obligations are too big for it to advance \$750,000.00 per quarter. NSS seeks to return to bi-monthly (*i.e.*, every other week, on average) disbursement schedule that it received prior to June 30, 2009. NSS recognizes that the Commission did not face this request in the Unicom case, but the circumstances here are such that NSS must seek this type of relief, and on an expedited basis.

2. NSS Will Go Out of Business Absent a Waiver of Section 54.611

The financial facts of this matter are sobering, competing and unavoidable; and indeed they are elementary. NSS' "non-*de minimus*" USF contribution for 2011 is projected at approximately \$200,000.00. NSS estimates that it will invoice USAC for approximately \$1,900,000.00 for qualifying services during July 1, 2011 and June 30, 2012 for Funding Year 2011. Thus, NSS will be a net recipient of USF disbursements from USAC in the amount of approximately \$1,700,000.00. NSS is a non facilities based telecommunications reseller business overall, and most of its revenue comes from providing intrastate data connectivity, internet connectivity and, to a lesser extent, interstate data connectivity. The company simply cannot sustain a temporary loss (the combination of credits to HCPs and delayed USAC reimbursements of those credits) of approximately 45% of its overall cash flow for upwards of a year or more occasioned by its participation in a federal program. No small provider could long survive in such an environment, which demands that a participant carrier render the service and advance the rural HCPs' payments until the fund administrator catches up on disbursements. Such a scheme is unfair, irrational and directly threatens NSS' viability as a going concern. The scheme also threatens the very stakeholders it is designed, ultimately, to benefit – rural HCPs and their patients.

There is no question, therefore, that good cause exists to grant this waiver. Absent the waiver, USAC's implementation of a rigid interpretation of Section 54.611 will punish the very constituency the RHCP is designed to serve. The public interest, defined by the needs of rural HCPs and their patients, is inconsistent with enforcement of this rule in such a blind fashion. In addition, such application of the rule would work a fatal hardship on NSS that is easily avoided when the Commission balances the interests at stake here.

B. NSS Merits A Stay of Section 54.611

For all the same reasons enunciated above, NSS respectfully but urgently requests an *immediate* stay of Section 54.611, such that NSS will continue to be treated by USAC similarly to a *de minimis* carrier for only the purposes of bi-monthly disbursements (*i.e.*, every other week, on average), while the Commission considers the instant waiver request.

1. NSS Is Likely to Prevail on the Merits of Its Waiver Request

As noted above, the Commission has granted waivers of Section 54.611 for very similar circumstances to those facing NSS. In establishing the RHCPP, the Commission waived Section 54.611 for all carriers, citing the inequities inherent in the rule. For Unicom, a carrier similarly situated to NSS, the Commission waived Section 54.611 because application of the rule by USAC would have deprived Unicom “of the funding flow needed to continue to perform its services contract.” An identical fact situation exists here. NSS is more than likely to prevail on the merits of its waiver request because rigid adherence to Section 54.611 would be inequitable and indeed illogical, and would deprive NSS of the funds necessary to continue operations.

2. NSS Will Suffer Irreparable Injury Absent a Stay

Simply and bluntly stated, NSS will cease operations by July 30, 2012 absent a waiver of Section 54.611. Given the usual processing time for a waiver request, NSS seeks a Stay to continue operation and to continue its participation in the RHCP on the very same terms as it has done for over 4 years. Absent a Stay, NSS simply cannot afford to subsidize USAC or its rural HCP customers. NSS has been working through normal USAC disbursement channels since 2006, but a Stay is now required pending formal waiver of Section 54.611 by the Commission.

3. A Stay Would Not Harm Other Parties

To the extent there are other interested parties in this situation, they would appear to be

the rural HCPs, their customers, and USAC. As noted above, absent a waiver of Section 54.611, which cannot occur quickly enough under normal processing timelines to sustain NSS' operations, NSS will cease providing service to its rural HCP customers on July 30, 2012.

Obviously, therefore, NSS' rural HCP partners would only be harmed if a Stay did *not* issue. Similarly, the rural HCPs' patients would be harmed absent a Stay. On the other hand, no party would be harmed in any way by issuance of a Stay. To reiterate: when NSS was a *de minimis* carrier USAC processed payments bi-monthly (*i.e.*, every other week, on average) without adverse effect to the USF or the RHCP. In fact no funding flow issues occurred while NSS was considered a *de minimis* carrier. NSS merely asks for continuation of such treatment now. USAC will pay out the same amount of money to support NSS' services whether a Stay issues or not. Only the timing of those payments will change, and that timing change is a return to the *status quo ante*.

4. A Stay Would Serve the Public Interest

As the Commission has repeatedly ruled, the public interest at stake here is provision of telecommunications services to rural HCPs and their patients.¹⁹ Granting a Stay here “is consistent with the goals of Section 254 of the Act – enhancing access to advanced telecommunications and information services for healthcare providers”.²⁰ Absent a Stay, NSS' rural HCP customers and their patients will be deprived of enhanced access to advanced telecommunications and information services as NSS will cease operations on July 20, 2012. NSS' request for Stay therefore serves the public interest.

CONCLUSION

Based on the foregoing, NSS respectfully requests that the Commission grant this

¹⁹ 2007 RHC Pilot Program Selection Order at ¶ 116, citing 47 U.S.C. § 254(h)(2)(A).

²⁰ Unicom at ¶ 10, citing 47 U.S.C. § 254(h)(2)(A).

petition for waiver of 47 C.F.R. § 54.611 for the reasons described herein; immediately stay enforcement of Section 54.611 such that NSS will not be considered a non-*de minimis* carrier for purposes of disbursements; direct USAC, to the extent necessary, to resume bi-monthly disbursements (*i.e.*, every other week, on average) to NSS; all such relief for such time as is needed for the Commission to process NSS' waiver request and grant NSS the ultimate relief it seeks herein.

Respectfully submitted,

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June 18, 2012

DECLARATION

I, Scott Madison, do hereby declare under penalty of perjury that factual statements made in the attached Petition for Waiver are true and correct to the best of my knowledge, information and belief.

Scott Madison

Signed: 6/14/2012

Scott Madison

[Signature]

Sworn to and subscribed before me this 14th day of June, 2012.

[Signature]
Notary Public

Printed name: Brandon Pinos Taylor

My commission expires: 8-29-15

